

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JESSE LEE HOPKINS,

Case No. 3:24-cv-00222-MO

Plaintiff,

ORDER TO DISMISS

v.

LT. ROUGHTON, *et al.*,

Defendants.

MOSMAN, District Judge.

Plaintiff, Jesse Lee Hopkins, an adult in custody at the Federal Correctional Institution in Sheridan, Oregon (“FCI Sheridan”), brings this civil rights action pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). *See* 2d. Am. Compl. (ECF 16). For the reasons set forth below, Plaintiff’s Second Amended Complaint is dismissed with prejudice for failure to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2).

BACKGROUND

Plaintiff was transferred to FCI Sheridan on December 28, 2023. 2d. Am. Compl. at 11. Within hours, he claims he was “threatened to be killed” by other adults in custody because he

had testified and cooperated in multiple “high profile murder case[s]” in Montana. 2d. Am. Compl. (ECF 16) at 11. Plaintiff alleges that Defendants Lt. Roughton and SIS Officers Thomas and Papp were aware of this history and knew that Plaintiff’s “life was in serious danger.” *Id.* Nevertheless, in January 2024, Defendants Roughton and Correctional Officers Huerta and Blanten placed Plaintiff in a cell with a “predatory violent inmate,” who was an active gang member and ultimately raped Plaintiff multiple times. *Id.* at 11-12.

Since his transfer to FCI Sheridan, Defendants Dr. Ayala Rubio Nelson and Dr. Grassley have treated Plaintiff for an anal rectal abscess and a gastrointestinal bleed. *Id.* at 12. However, he has several other serious medical issues that require seeing various specialists. *Id.* Plaintiff claims he is being denied necessary medical care. *Id.* In February 2024, Plaintiff was suffering from a kidney stone and alleges that Defendants Drs. Rubio Nelson and Grassley, and Nurses Heidi, Burgman, and Pond left him on the floor for five days while he tried to pass the stone. *Id.* at 13. During this time, he also suffered a seizure. *Id.*

In March 2024, Plaintiff alleges that Defendant Correctional Officer T. Skeffington called him homophobic slurs in front of Defendants Correctional Officers Winkler, Polascio and Vasquez who “just laughed.” *Id.* at 15. Plaintiff also alleges that Defendant Polascio verbally sexually harassed him. *Id.* at 19. Plaintiff reported the harassment to Defendant Captain J. Cerone, who allegedly “allowed this staff misconduct to continue without mandatory reporting.” *Id.* at 15.

Plaintiff, who is transgender, alleges that he is not receiving gender conforming care, including underwear and bras, and that he is being housed with “sexual predators.” *Id.* at 19. He alleges Defendant Case Manager Johnson is denying him grievance forms and wrongly classified

him as a sex offender. *Id.* at 21. He also claims that prison officials lost over \$2,000.00 of Plaintiff's personal property during his transfer to FCI Sheridan. *Id.* at 17. Plaintiff seeks compensatory damages as well as injunctive relief. *Id.* at 23-24, 26.

STANDARDS

Pursuant to 28 U.S.C. § 1915A(a), the Court is required to screen prisoner complaints seeking relief against a governmental entity, officer, or employee and must dismiss a complaint if the action is frivolous, malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). In order to state a claim, Plaintiff's Complaint must contain sufficient factual matter which, when accepted as true, gives rise to a plausible inference that Defendants violated his constitutional rights. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 556-57 (2007). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

Dismissal for failure to state a claim is proper if it appears beyond doubt that Plaintiff can prove no set of facts in support of his claims that would entitle him to relief. *Ortez v. Washington County*, 88 F.3d 804, 806 (9th Cir. 1996); *Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993). Because Plaintiff is proceeding *pro se*, the Court construes his pleadings liberally and affords him the benefit of any doubt. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Ortez*, 88 F.3d at 806.

DISCUSSION

Plaintiff brings this action pursuant to *Bivens*, alleging that the named Defendants provided him inadequate medical care, subjected him to cruel and unusual punishment, failed to

protect him, violated his right to equal protection of the laws, discriminated against him because he is transgender, verbally harassed him and are responsible for his property loss. He names twenty FCI Sheridan officials and staff as Defendants.

Bivens “recognized for the first time an implied right of action for damages against federal officers alleged to have violated a citizen’s constitutional rights.” *Hernandez v. Mesa*, 137 S. Ct. 2003, 2006 (2017) (per curiam) (citation omitted). In order to hold federal officials liable under *Bivens*, a plaintiff must show “(1) that a person acting under color of state law committed the conduct at issue, and (2) that the conduct deprived the claimant of some right, privilege, or immunity protected by the constitution or the laws of the United States.” *Beltran v. United States*, No. 3:15-CV-00785-SI, 2015 WL 7722414, at *3 (D. Or. Nov. 30, 2015) (citing *Leer v. Murphy*, 844 F.2d 628, 632 (9th Cir. 1988)). Within the meaning of *Bivens*, a person deprives another of a constitutional right “if he does an affirmative act, participates in another’s affirmative acts, or omits to perform an act which he is legally required to do that causes the deprivation of which [the plaintiff complains].” *Id.* (citing *Leer*, 844 F.2d at 633).

As alleged, Plaintiff’s Second Amended Complaint is subject to dismissal for failure to state a claim for several reasons. First, Plaintiff fails to make any allegations against Defendants Warden Jacquez, Assistant Warden Bills and Correctional Officer Coyle. Second, he raises several claims that are not recognized as *Bivens* actions. 2d. Am. Compl. (ECF 16) at 11-12, 15, 17, 19, 21. Plaintiff was previously advised, the Supreme Court has recognized *Bivens* actions in only three contexts: under the Eighth Amendment for providing inadequate medical treatment to a federal prisoner, under the Fifth Amendment for gender discrimination in federal employment, and under the Fourth Amendment for unlawful searches and seizures. Order to Dismiss dated

Apr. 17, 2024 (ECF 11) at 5 (citing *Carlson v. Green*, 446 U.S. 14, 18 (1980); *Davis v. Passman*, 442 U.S. 228 (1979); *Bivens*, 403 U.S. at 394-97). Finally, although Plaintiff raises an Eighth Amendment inadequate medical care claim under *Bivens*, he sues all the named Defendants in this action in their *official* capacity only. 2d Am. Compl. (ECF 16) at 2-3, 5, 7. The Court notes that it previously advised Plaintiff that a *Bivens* action must be brought against the responsible federal official in his or her *individual* capacity. Order to Dismiss dated Apr. 17, 2024 (ECF 11) at 3 (citing *Daly-Murphy v. Winston*, 837 F.2d 348, 355 (9th Cir. 1987)). Accordingly, Plaintiff's Second Amended Complaint is dismissed with prejudice in its entirety for failure to state a claim.

CONCLUSION

Based on the foregoing, IT IS ORDERED that Plaintiff's Second Amended Complaint (ECF 16) is DISMISSED with prejudice. All pending motions are DENIED as MOOT.

IT IS SO ORDERED.

5/14/2024

DATE

Michael W. Mosman

Michael W. Mosman

United States District Judge